IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1164 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO.LTD. - Appellant(s)
Versus
KANAKLATABEN, WIDOW OF JAGDISHCHANDRA KANTILAL GANDHI & 6 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR NILESH A PANDYA for Defendant(s) : 1 - 7.
None for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/08/2007

ORAL JUDGMENT

Shri Rajni H.Mehta, learned counsel for the appellant; Shri Nilesh A. Pandya, learned

counsel for the respondents no. 1 to 3 and 5 to 7. Shri K.C. Shah, learned counsel who is appearing for the respondent no.4 has filed leave-note but in view of the High Court Rules, I refuse to take note of the leave-note and proceed with the hearing of the appeal.

2. National Insurance Company Ltd., being aggrieved by the award dated 27.7.89 passed by the M.A.C.Tribunal [Main], Vadodara in M.A.C. Petition No.195 of 1986 is before this Court with a submission that the award is patently illegal and no directions could be issued against the Insurance Company.

3. After taking me through para-24 of the judgment, it was contended that the vehicle was a goods vehicle and carrying of the passengers in such vehicle was not permissible. It is submitted that from the statement of Chimanlal Purani and exh.54, it will clearly appear that the R.T.O. had issued permit to use the vehicle as goods vehicle only. Shri Nilesh Pandya, learned counsel for the respondents submitted that the deceased was not traveling as a passenger in the

goods vehicle but was traveling as owner of the goods which were carried in the vehicle.

4. In the matter of *New Assurance Company Ltd. v. Vedwati [AIR 2007 Supreme Court 1334]*, I am unable to accept the contention raised by the learned counsel for the respondents.

5. Once it is proved that a passenger was carried in a goods vehicle either for hire or reward or even he was being carried as a gratuitous passenger to look after his own goods, the Insurance Company would not be answerable to the claim made by such person or his dependents.

6. In view of the settled position of law, the award made against the interest of the appellant-Insurance Company is hereby set aside.

7. Shri Mehta, learned counsel for the appellant submits that to discharge the liability under the award, the Insurance Company has paid the entire amount and therefore, direction be issued in favour of the Insurance Company to make effective recovery.

8. Taking into consideration the totality of the circumstances and also taking into consideration

that the driver and the owner have not filed any appeal challenging the correctness of the award nor have they challenged their liability, I direct that the Insurance Company may recover the entire amount from the driver and the owner. The Insurance Company would also be entitled to interest at the rate of 6% per annum from the date when they made deposits either in the Tribunal or paid the same to the claimants, till the recovery. The appeal stands allowed. No costs.

[R.S. GARG, J.]

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